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**Precision Indoor Comfort, Inc. and Sheet Metal  
Workers International Association, Local Union  
No. 33, of Northern Ohio, AFL-CIO. Case 8-  
CA-35080**

February 23, 2005

**NOTICE OF PUBLICATION**

On February 16, 2005, the attached inadvertently issued as an unpublished Decision and Order. The Board had decided to publish this Decision and Order.

February 16, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND  
MEMBERS LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge and amended charges filed by the Union on May 29, November 1 and November 12, 2004, respectively, the General Counsel issued the complaint on November 17, 2004, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 8-RC-16560. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting an affirmative defense.

On December 6, 2004, the General Counsel filed a Motion for Summary Judgment and supporting brief. On December 9, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent denies that the Union was properly certified as the exclusive bargaining representative of the unit employees, and attacks the validity of the certification on the basis of its objections to the election in the representation proceeding. The Respondent also raises as an affirmative defense that "The Union's illegal conduct during the election period invalidated the election and precluded it from being properly certified as the bargaining representative of the unit."

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

The Respondent's answer also denies the allegations that the Union requested bargaining on or about April 15, 2004, and that the Respondent has refused to meet and bargain since that date. We find that the Respondent's denials of these allegations do not raise an issue warranting a hearing in this proceeding. A copy of the Union's April 15, 2004 letter to the Respondent requesting bargaining and documents showing that this letter was received by certified mail and facsimile transmission are attached as an exhibit to the General Counsel's motion. The Respondent has not disputed the authenticity of the letter or the documents proving that the Respondent received it. Further, the Respondent does not contend that it has offered or agreed to meet and bargain with the Union since its April 15 request. Instead, it is clear from the Respondent's answer that the Respondent is in fact refusing to bargain with the Union in order to test the Union's certification.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, an Ohio corporation with an office and place of business located at 434 West Wilbeth Road, Akron, Ohio, has been engaged in the fabrication, installation, and service of heating and cooling equipment.

Annually, in the course and conduct of its business as described above, the Respondent purchases and receives products valued in excess of \$50,000 directly from points located outside the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and

<sup>1</sup> Members Liebman and Schaumber did not participate in the underlying representation proceeding. They agree, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is therefore appropriate.

(7) of the Act, and that Sheet Metal Workers International Association, Local Union No. 33, of Northern Ohio, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

### A. *The Certification*

Following the election held November 7, 2003, the Union was certified on April 7, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time installers, sheet metal workers and service technicians employed by the Employer at its facility located at 434 Wilbeth Road, Akron, Ohio; but excluding all office clerical employees, sales employees and all professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. *Refusal to Bargain*

Since on or about April 15, 2004, and thereafter, the Union, by certified mail and facsimile, requested the Respondent to bargain with it and, since that same date, the Respondent has refused to bargain with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By refusing since April 15, 2004, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to meet and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

## ORDER

The National Labor Relations Board orders that the Respondent, Precision Indoor Comfort, Inc., Akron, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Sheet Metal Workers International Association, Local Union No. 33, of Northern Ohio, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time installers, sheet metal workers and service technicians employed by the Employer at its facility located at 434 Wilbeth Road, Akron, Ohio; but excluding all office clerical employees, sales employees and all professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Akron, Ohio, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 15, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., February 16, 2005

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Sheet Metal Workers International Association, Local Union No. 33, of Northern Ohio, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time installers, sheet metal workers and service technicians employed by us at our facility located at 434 Wilbeth Road, Akron, Ohio; but excluding all office clerical employees, sales employees and all professional employees, guards and supervisors as defined in the Act.

PRECISION INDOOR COMFORT, INC.